

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal and Civil Justice Appropriations Committee

BILL: PCS/SB 1722 (164736)

INTRODUCER: Criminal and Civil Justice Appropriations Committee

SUBJECT: Department of Corrections

DATE: March 27, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Butler	Sadberry	JA	Pre-meeting
2.			GO	
3.			WPSC	
4.			RC	
5.				
6.				

I. Summary:

This bill is a conforming bill for Senate Proposed Bill 7066 relating to Criminal and Civil Justice Appropriations. This bill makes necessary statutory changes to implement \$7.3 million in recurring general revenue reductions to the Department of Corrections. These reductions, as well as recurring general revenue cost avoidances may only be achieved through implementation of PCS/SB 1722.

This bill makes a number of changes relating to corrections, including:

- Creating a prison diversion approach by requiring the court to sentence certain non-violent low-scoring offenders to a non-state prison sanction unless the court finds that such a sentence could endanger the public.
- Creating a state-funded diversion program operated by the Department of Corrections (department) to allow the court to divert certain non-violent offenders to a residential, non-residential or day-reporting program with substance abuse treatment, employment opportunities, and other program components designed to assist the offender in maintaining his or her law-abiding behavior.
- Authorizing the department to contract with county and municipal facilities in Florida and out-of-state public and private facilities
- Increasing the inmate copayment for non-emergency health care from \$4 to \$5.
- Capping payments for non-contractual medical services by codifying language contained in the 2008 General Appropriations Act.
- Requiring all offenders who are subject to electronic monitoring to pay the department for the monitoring service.

- Requiring courts to use an order of supervision form provided by the department when placing an offender on community supervision.
- Allowing sentencing courts to modify the sentence of a youthful offender who is successfully completing the Basic Training Program so that he or she can be placed on probation immediately after completion.

This bill substantially amends the following sections of Florida Statutes: 775.082, 945.6037, 947.1405, 948.01, 948.09, 948.11, 957.09, and 958.045.

This bill creates sections 921.00241, 944.171 and 945.6041 of the Florida Statutes.

II. Present Situation:

Sentencing and Diversion Programs

Section 775.082, F.S., specifies the penalty structure for the different felony classifications. A person who has been convicted of a felony of the third degree may be punishable by a term of imprisonment not exceeding 5 years.

Chapter 921, the Criminal Punishment Code (“Code”) applies to defendants whose non-capital felony offenses were committed on or after October 1, 1998.¹ Each non-capital felony offense is assigned a level ranking that reflect its seriousness.² There are ten levels, and Level 10 is the most serious level.³ The primary offense, additional offenses and prior offenses are assigned level rankings.⁴ Points accrue based on the offense level, with higher level accruing a greater number of points. The primary offense accrues more points than an additional or prior offense of the same felony degree. Points may also accrue or be multiplied based on other factors such as victim injury, legal status, community sanctions, motor vehicle theft, etc.

The total sentence points scored is entered into a mathematical computation that determines the lowest permissible sentence. If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction, though the sentencing range is the minimum sanction up to the maximum penalty provided in s. 775.082, F.S. If the total sentence points exceeds 44 points, a prison sentence is the lowest permissible sentence, though the judge may sentence up to the maximum penalty provided in s. 775.082, F.S.⁵ Sentence length (in months) for the lowest permissible sentence is determined by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.

Under current law a judge can sentence any third degree felon for up to five years in prison regardless of the total sentence score. In the last few years thousands of offenders whose

¹ Section 921.002, F.S.

² The level ranking is assigned either by specifically listing the offense in the appropriate level in the offense severity ranking chart of the Code, s. 921.0022, F.S., or, if unlisted, being assigned a level ranking pursuant to s. 921.0023, F.S., based on the felony degree of the offense.

³ Section 921.0022, F.S.

⁴ Section 921.0024, F.S. All information regarding the Code is from this statute, unless otherwise indicated.

⁵ If the sentence scored exceeds the maximum penalty in s. 775.082, F.S., the scored sentence is both the minimum sentence and the maximum penalty.

sentence points are under the 44 point threshold recommended for a prison sanction have been sentenced to state prison. The absence of adequate diversionary programs and the overcrowding of jails have reportedly encouraged this trend of sending more low-level offenders to state prison.

According to the department, research has shown that diversionary programs which offer substance abuse treatment, vocational programming, employment and job training and intense supervision have reduced offender recidivism and reduced prison populations by implementing these programs. The goal of these programs is to improve public safety by reducing crime through providing non-violent offenders with the tools to function successfully in the community.

Correctional System Capacity

Section 947.146, F.S., provides for the release of inmates under control release to ensure that the population of the state prison system does not exceed 100% of the system's total capacity.⁶ If the number of inmates is projected to exceed 99% of total capacity, the Florida Parole Commission (acting as the Control Release Authority) must develop plans for the release of suitable inmates in order to maintain the inmate population between 99% and 100% of total capacity. Control release was last implemented more than 10 years ago when 83,464 inmates were released in the period from Fiscal Year 2000 to Fiscal Year 2005. There is no concern that the Florida inmate population will approach the total capacity threshold in the near future. However, projected continuing growth in the inmate population requires planning to manage the ratio of the inmate population to the total capacity of the system. This management can be accomplished by reducing the number of inmates (such as through appropriate diversion programs) or by increasing the capacity of the system (such as by building new prisons).

On January 1, 2009, the total inmate population was 99,585, including inmates housed at six private prisons as authorized in ch. 957, F.S.

Medical Care Payment Limitations

The department provides a basic level of health services within its institutions.⁷ Each major correctional institution provides infirmary services for nursing level care, such as monitoring vital signs, administering intravenous fluids, changing bandages and dressings, stabilizing patients after procedures, and monitoring long-term patients who are not acutely ill but cannot

⁶ Total capacity is defined in s. 944.023(1)(b), F.S., as follows:

“Total capacity” of the state correctional system means the total design capacity of all institutions and facilities in the state correctional system, which may include those facilities authorized and funded under chapter 957, increased by one-half, with the following exceptions:

1. Medical and mental health beds must remain at design capacity.
2. Community-based contracted beds must remain at design capacity.
3. The one-inmate-per-cell requirement at Florida State Prison and other maximum security facilities must be maintained pursuant to paragraph (7)(a).
4. Community correctional centers and drug treatment centers must be increased by one-third.
5. A housing unit may not exceed its maximum capacity pursuant to paragraphs (7)(a) and (b).
6. A number of beds equal to 5 percent of total capacity shall be deducted for management beds at institutions.

⁷ Inmate health services are a constitutional right. *Costello v. Wainwright*, 430 U.S. 325, 51 L.Ed. 2d 372, 97 S.Ct. 1191 (1977).

live among the general population. For more serious medical procedures, such as surgeries and treatment for chronic diseases, the department operates a 153-bed hospital at the Reception and Medical Center in Lake Butler. Also at the prison hospital, a contracted mobile surgery unit provides ambulatory surgery services.⁸

Medical care that cannot be provided by department resources must be obtained from outside health care providers. The department has contracted for discounted or fixed pricing from many, but not all, of its outside providers. Having an established price allows the department to control costs and predict future expenses. However, the department has not been able to contract with all of the health care providers that it uses and often receives little or no discount when paying non-contractual medical expenses. It spent more than \$76 million on hospital and emergency medical care for inmates during Fiscal Year 2007-2008.⁹

Proviso language in the 2008 General Appropriations Act limited the amount the department can pay for medical services rendered by hospitals or physicians. The limit is normally 110 percent of the Medicare rate, but is 125 percent of the Medicare rate if the hospital reported an operating loss to the Agency for Health Care Administration.¹⁰ The department estimates that the proviso will result in avoidance of more than \$15 million in expenses for the current fiscal year. However, the limitation in proviso language will not apply to claims incurred after the end of the fiscal year.

Inmate Copayments

Section 945.6037, F.S., requires an inmate to make a copayment of \$4 for a nonemergency health care visit that is initiated by the inmate. The copayment is deducted from the inmate's bank account. If there are insufficient funds in the account, 50% of any deposits made into the account are collected until the copayment is satisfied. The statute recognizes a number of circumstances for which the copayment may be waived by the department. It also provides that an inmate cannot be denied health care for nonpayment or given preferential treatment for payment of the copayment.

Community Supervision

Overview

More than 117,000 offenders are actively supervised by the Department of Corrections on some form of community supervision.¹¹ Florida law recommends community supervision for offenders who do not appear to be likely to reoffend and who present the lowest danger to the welfare of society. Generally, this includes those offenders whose sentencing score sheet result does not fall into the range recommending incarceration under the Criminal Punishment Code.

⁸ Report Number 09-07, *Steps to Control Inmate Health Care Costs Have Begun to Show Savings*, January 2009, Office of Program Policy Analysis and Government Accountability.

⁹ Department of Corrections 2009 Bill Analysis, Senate Bill 2298.

¹⁰ OPPAGA Report Number 09-07, *supra* reflects that the department indicated that 10 hospitals had not renewed contracts and accepted only emergency room admissions as of October 9, 2008 due to the reimbursement limitations of the proviso. These hospitals are Baptist Hospital (Pensacola), Baptist Medical Center (Miami), Jacksonville Plastic Surgery, Lee Memorial Hospital, Winter Haven Memorial, and Shands hospitals at Jacksonville, Lake Shore, Live Oak, Starke, and at the University of Florida (Gainesville).

¹¹ Department of Corrections Monthly Status Report of Florida's Community Supervision Population, January 2009.

The two major types of community supervision are probation and community control. Community control is a higher level of supervision that is administered by officers with a statutorily mandated caseload limit. Both probation and community control are judicially-imposed sentences that include standard statutory conditions as well as any special conditions that are directed by the sentencing judge. Section 948.03, F.S., sets forth standard conditions of probation or community control. The sentencing court may also add special conditions that it considers to be proper.¹²

The conditions of supervision that apply to a particular offender are set forth in the order of supervision that is entered by the court when an offender is sentenced. There is no statewide format for the order of supervision, but the department has developed a uniform order of supervision that it reports is now being used by a majority of judicial circuits.

Electronic Monitoring

Offenders on any type of community supervision may be ordered to submit to electronic monitoring.¹³ However, only community controlees are statutorily required to pay for such monitoring. Section 948.09, F.S., requires a community controlee who is on electronic monitoring to pay a surcharge in an amount that may not exceed the full cost of the monitoring service. This is in addition to the cost of supervision fee as directed by the sentencing court.

Although community controlees are the only type of offender required to pay for electronic monitoring, the department attempts to collect the monitoring surcharge from offenders on other types of supervision. However, efforts to collect are hindered by the fact that there is no statutory requirement that such offenders pay for monitoring.

As a whole, offenders only paid about 10 percent of the costs of electronic monitoring. The following chart reflects the statewide cost of electronic monitoring and the amount paid by offenders for the past three fiscal years:

Fiscal Year	Total Expenditures	Number of Offenders on Electronic Monitoring	Revenue Collected	Percent of Collection
07-08	\$5,510,068	2,066	\$532,812	10%
06-07	\$2,862,880	1,415	\$375,573	13%
05-06	\$3,706,180	979	\$256,138	7%

Basic Training Program

Section 958.045, F.S., requires the department to develop and maintain a basic training program for persons who are sentenced by a court or classified by the department as a youthful offender. Classification as a youthful offender is dependent upon an offender’s age and the offense that is committed. A court may sentence a defendant as a youthful offender if the defendant:

¹² See Jones v. State, 661 So.2d 50 (Fla 2nd Dist. 1995). Some special conditions are included in the statutes as options for the sentencing court, and others are devised by the court.

¹³ As of January 12, 2009, the department had 2209 offenders on active GPS electronic monitoring, which costs \$8.94 per day (75% of these offenders are sexual offenders), and 100 offenders on radio frequency electronic monitoring, which costs \$1.97 per day.

- Is at least 18 years of age or was prosecuted as an adult pursuant to ch. 985, F.S., but is under 21 years old at the time of sentencing;
- Has been found guilty of or has pled nolo contendere or guilty to a felony that is not punishable by death or imprisonment for life; and
- Has not previously been classified as a youthful offender.¹⁴

The department must assign an inmate who is less than 18 years old to a youthful offender facility even if he or she was not sentenced as a youthful offender.¹⁵ The department is also required to screen for and may classify as a youthful offender any inmate who is under 25 years old, who has not previously been classified as a youthful offender, and who has not committed a capital or life felony. The department may classify any inmate 19 years of age or younger, except a capital or life felon, as a youthful offender if it determines that the inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful facility.¹⁶

The purpose of the basic training program is to divert the youthful offender from lengthy incarceration when a short "shock" incarceration could produce the same deterrent effect.¹⁷ By statute, the program must include marching drills, calisthenics, a rigid dress code, manual labor assignments, physical training with obstacle courses, training in decision-making and personal development, general education development and adult basic education courses, drug counseling, and other rehabilitation programs. The department's program is 120 days long and graduates approximately 169 inmates per year.¹⁸

Section 948.045(5)(a), F.S., provides:

... Upon the offender's completion of the basic training program, the department shall submit a report to the court that describes the offender's performance. If the offender's performance has been satisfactory, the court shall issue an order modifying the sentence imposed and placing the offender on probation. ...

Because this requires the department to wait until the inmate has completed the program before submitting the performance report to the court, youthful offenders must wait in prison while the sentencing court reviews the information and issues a modification order. The department reports that this process takes an average of 22 days.

III. Effect of Proposed Changes:

Section 1 amends s. 775.082, F.S., to require the court in certain circumstances to sentence certain low-scoring offenders convicted of a third degree felony to a non-state prison sanction. The new sentencing approach is effective for sentences imposed on or after July 1, 2009. Under

¹⁴ Section 958.04(1), F.S.

¹⁵ Section 944.1905(5)(a), F.S.

¹⁶ Section 958.11(6), F.S.

¹⁷ *Id.*

¹⁸ Analysis of Senate Bill 2298, *supra*.

current law the court may sentence a person who has been convicted of a felony of the third degree, regardless of his total sentencing score, to a term of imprisonment not to exceed 5 years.

This diversionary approach restricts judicial discretion for certain low-scoring offenders where a prison sanction is not recommended under the Criminal Punishment Code unless the court makes written findings that a non-state prison sanction could present a danger to the public. This new automatic non-state prison sanction is only applicable for third degree felons who have 22 or less total sentencing points and who have not been convicted of a forcible felony as defined in s. 776.08, F.S., except those forcible felonies involving burglary of an unoccupied conveyance or structure in Chapter 810, F.S.

Section 2 amends Chapter 921, F.S., relating to sentencing, to create s. 921.00241, F.S., a state-funded prison diversion program. Effective for sentences imposed on or after July 1, 2009, the court may divert from the state prison system an offender who otherwise would be sentenced to state prison. The court may opt to sentence an offender to a non-state prison sanction and place the offender on community supervision so that he or she may participate in a residential, non-residential, or day reporting program which provides a variety of wrap-around assistance and structure to ensure his or her success in maintaining law-abiding behavior in the community.

To be eligible for consideration for the diversion program, the offender must have:

- A third degree felony as the primary offense;
- A total sentence points score of 48 points (or the offender's total point score is 54 and six of those points are for a violation of community control that does not involve a new law violation);
- Not been convicted or previously convicted of a forcible felony as defined in s. 776.08, F.S., excluding any forcible felony violation involving burglary of an unoccupied conveyance or structure; and
- Not be subject to a minimum mandatory sentence.

Placement in the department's prison diversion program is contingent upon whether the program is funded and exists in the judicial circuit in which the offender is sentenced.

If the court opts to sentence an offender to this program, the court must make a written finding that the defendant meets the eligibility criteria and that the sentence included the participation in the prison diversion program.

Section 3 creates s. 944.171, F.S., to authorize the department to enter into contracts to house inmates in Florida county and municipal facilities and out-of-state public or private facilities. Any such contract must be procured in accordance with the purchasing requirements of s. 287.057, F.S. Inmates remain under the department's jurisdiction even if they are housed in a facility that is not operated by the department.

Before an inmate is transferred to a non-department facility, the department must reclassify and score the custody risk of the inmate based on the current offense and not based on prior criminal history. The inmate must be reclassified when returned to a state correctional institution.

The bill provides that the department may contract with another state or its political subdivision, or with a private correctional management services vendor, to transfer and confine an inmate in a facility that is not located in Florida. Such a contract must include or require:

- A termination date.
- Provisions concerning the costs of inmate maintenance, extraordinary medical and dental expenses, receipt of any rehabilitative or correctional services, facilities, programs, or treatment costs, including those that are not included as part of normal maintenance.
- Provisions for transfer of custody and transportation.
- Waiver of extradition for each state.
- Retention of jurisdiction of the inmates by Florida.
- Regular reporting procedures to the department.
- Provisions for community supervision.
- The same standard of reasonable and humane care that the inmates would receive in an appropriate institution in Florida.

The bill provides that beds that are contracted for under the section are to be added to the total capacity of the correctional system.

The bill requires the department to consider the proximity of the facility to the inmate's family to the extent possible when making the decision to place an inmate in a non-departmental facility. This recognizes the important role that visits from family can play in improving an inmate's behavior and helping to reduce recidivism after release, as is set forth in the statement of legislative intent in s. 944.8031, F.S.

Section 4 amends s. 945.6037, F.S., to increase from \$4 to \$5 the copayment that must be paid by an inmate for a non-emergency visit to a health care provider.

Section 5 codifies much of the proviso language contained in the 2008 General Appropriations Act. It provides that compensation for inmate medical services may not exceed 110 percent of the Medicare allowable rate if there is not a contract between the department and the health care provider. This allowable compensation is increased to no more than 125 percent of the Medicare allowable rate if the health care provider reported a negative operating margin for the previous year to the Agency for Health Care Administration. The bill also provides that compensation for emergency medical transportation services may not exceed 110 percent of the Medicare allowable rate in the absence of a contract between the department and the emergency medical transportation service.

The bill defines the term "health care provider" in accordance with s. 766.105, F.S., and provides that the term "emergency medical transportation services" includes but is not limited to services rendered by ambulances, emergency medical services vehicles, and air ambulances.

Section 6, 8, and 9 amend electronic monitoring statutes, sections 947.1405, F.S., 948.09, F.S., and 948.11, F.S., to require offenders on all types of supervision to pay for the monitoring service. The bill gives the department permissive authority to exempt a person from payment of

all or any part of payment if it finds that the offender would qualify as being indigent in light of the factors listed in s. 948.09(3), F.S. It also requires that electronic monitoring services be obtained through competitive procurement under s. 287.057, F.S., rather than the more specific and less flexible current requirement to use an invitation to bid.

Section 7 amends s. 948.01, F.S., to require courts to use the orders of supervision provided by the department for all persons placed on community supervision. This will create statewide uniformity in orders of supervision, and will make it easier to ensure that the orders will all be amended to accurately reflect any applicable changes in the law. Having a uniform statewide order will also further a future transition to electronic submission of orders.

Section 10 provides that the provisions of chapter 957, F.S., relating to correctional privatization, do not apply to contracts entered into under the authorization of s. 944.171, F.S., which is created by Section 7 of this bill.

Section 11 amends s. 958.045, F.S., to permit the department to submit the required report of a youthful offender's performance in a basic training program to the court within 30 days prior to the scheduled completion of the program. The bill also authorizes the court to issue an order that modifies the sentence of a successful youthful offender to place him or her on probation effective upon the offender's successful completion of the remainder of the program. There is nothing in the statute that would prevent the department from notifying the court if an offender does poorly or commits misconduct between the date of notice and completion of the program.

Section 12 provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There will be a positive fiscal impact for any providers of services or programs that are used to implement the diversion programs that are created by the bill.

C. Government Sector Impact:

This bill has a number of sections that may have a positive fiscal impact on the government sector. The savings could be substantial in the case of limiting the amount of payment for non-contractual medical services, payment for the costs of electronic monitoring, and moving youthful offenders to probation immediately after completion of the Basic Training Program.

Section 1: The Division of Economic and Demographic Research (EDR) estimates that this prison diversion approach would eliminate the need for 781 new prison beds for FY 2009-2010. This fiscal impact assumes that approximately 50% of the judges will opt to not allow this diversion from prison and declare such a diversion to be a danger to the public.

Section 2: EDR estimates that this diversion program would eliminate the need for 184 new prison beds for FY 2009-2010. This fiscal impact assumes that approximately 2.5% of the judges will opt to place an offender who otherwise would have been prison-bound in the diversion program.

Senate Proposed Bill 7066 relating to Criminal and Civil Justice Appropriations includes a \$6.9 million recurring general revenue reduction based on lower prison admissions through implementation of sections 1 and 2 of this bill, PCS/SB 1722. For FY 2009-10, \$3 million in non-recurring federal discretionary fiscal stabilization funds from the American Recovery and Reinvestment Act of 2009 is included to implement community drug treatment, residential and non-residential programming, day reporting, or other services to assist in the successful diversion of non-violent offenders from prison.

Section 3: This section is provided as a method to allow a quick response to any unanticipated surge in prison population that would raise the possibility of implementation of control release measures. Because such a surge is not expected, the section is not expected to have a fiscal impact; however, in the event of any unanticipated surge in prison population, no funding for construction of correctional facilities has been provided in SPB 7066.

Section 4: The department estimates that increasing the inmate copayment for non-emergency health care from \$4 to \$5 will result in collection of an additional \$117,187 each year.

Section 5: The department anticipates that the proviso language that is currently in effect will result in more than \$15 million in savings to the state during this fiscal year. Because

the bill codifies the proviso language, the department anticipates similar annual savings in the future.

Sections 6, 8, and 9: Adding a statutory requirement for any offender who is on electronic monitoring as a result of any form of supervision to pay for the costs of monitoring may result in recovery of additional costs. Currently, the statute only requires payment by offenders who are on community control. During the last fiscal year, the department recovered 10 percent of the \$5.5 million that it expended for electronic monitoring. Each increase of 10 percent in the recovery rate would result in recovery of an additional \$550,000 dollars.

Section 11: The department estimates that the amendment of s. 958.045, F.S., to allow the court to issue an order modifying the sentence so that it takes effect immediately upon a youthful offender’s successful completion of the Basic Training Program would save \$260,000 annually. This estimate is based upon eliminating the current 22 day average time that program graduates must remain incarcerated while awaiting a modification order. The calculation is as follows:

22 days waiting X 165 graduates per year	3,630 days
Incarceration cost savings: 3,630 days X \$78.17 per diem at Sumter Basic Training Unit	\$283,757
Additional supervision costs: 3,630 days X \$6.69 per diem for supervision	\$24,285
Projected total annual cost savings	\$259,472

SPB 7066 relating to Criminal and Civil Justice Appropriations includes a \$250,000 recurring general revenue reduction based on implementation of section 11 of this bill, PCS/SB 1722.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
